1 2 3 4 5 6 7 8 IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON 9 AT SEATTLE 10 Case No. C21-1683-MLP DERRICK C. BOSLEY, SR. 11 PRETRIAL ORDER Plaintiff, 12 VS 13 DEPUY SYNTHES SALES, INC. d/b/a/ 14 **DEPUY SYNTHES JOINT** RECONSTRUCTION; DEPUY 15 ORTHOPAEDICS, INC.; DEPUY 16 INTERNATIONAL LIMITED; JOHNSON & JOHNSON; JOHNSON & JOHNSON 17 SERVICES, INC.; JOHNSON & JOHNSON INTERNATIONAL; MEDICAL DEVICE 18 BUSINESS SERVICES, INC.; DEPUY, INC.; DEPUY SYNTHES PRODUCTS, 19 INC.; DEPUY SYNTHES, INC.; DEPUY 20 IRELAND UNLIMITED COMPANY; DEPUY SYNTHES JOHNSON & 21 JOHNSON IRELAND LTD.; AND RELATED ENTITIES A, B AND C, 22 Defendants. 23 24 25 26

PRETRIAL ORDER - C21-1683-MLP - 1

JURISDICTION

Jurisdiction is vested in this Court by virtue of and pursuant to 28 U.S.C. §1332 in that the amount in controversy alleged exceeds \$75,000.00, exclusive of interest and costs, and this is an action by an individual Plaintiff against Defendants¹ who are citizens of different states.

CLAIMS AND DEFENSES

The Plaintiff will pursue the following claims at trial:

- First Cause of Action Washington Product Liability Act, Unsafe Design,
 Strict Liability.
 - 2. Fifth Cause of Action Washington Product Liability Act, Failure to Warn.

The Defendants intend to assert certain affirmative defenses that they will pursue at trial and in response to Plaintiff's claims, including, but not limited to, the following:

- 1. Plaintiff's Complaint fails, in whole or part, to state a claim upon which relief may be granted.
- 2. Plaintiff fails to, and cannot, present evidence to support his claims against the Defendants. NOTE: Plaintiff objects to this asserted defense.
- 3. Plaintiff fails to meet his burden to show that Defendants are liable for his alleged injuries. NOTE: Plaintiff objects to this asserted defense.

¹ In submitting this Joint Pretrial Order, Defendants do not waive and expressly reserve their objections to the entirety of Plaintiff's pretrial disclosures, which were due (per LCR 16(h)) on August 10, 2023, but which were not served on Defendants until August 24, 2023.

- 4. Plaintiff fails to provide reliable expert testimony to support his claim that Defendants' alleged conduct caused his injuries. *Bruns v. PACCAR, Inc.*, 890 P. 2d 469, 477 (Wash. Ct. App. 1995). NOTE: Plaintiff objects to this asserted defense.
- 5. Plaintiff knowingly and voluntarily assumed any and all risks associated with the use of the ATTUNE® product at issue in this case and was subjectively aware of facts which cover any and all risks. Such assumption of the risks bars in whole or in part the damages Plaintiff seeks to recover in this case.
- 6. Plaintiff's alleged injuries attributable to the use of the ATTUNE® product in this case, if any, were not legally caused by the ATTUNE® product, but instead were legally caused by intervening and superseding causes or circumstances.
- 7. Plaintiff's alleged damages, if any, are barred in whole or in part by Plaintiff's failure to mitigate such damages.
- 8. Plaintiff's causes of action are barred by the applicable statutes of limitation, statutes of repose, doctrines of laches and/or estoppel.
- 9. Plaintiff's claims are barred in whole or in part because the ATTUNE® product was, at all relevant, times manufactured and sold consistent with available technology, scientific knowledge, and the state of the art, and in compliance with all federal, state, and local laws and regulations, and was accompanied by product information and warnings that were reasonable, full and adequate and in accordance with FDA regulating requirements and the state of medical and scientific knowledge then in existence. Compliance with such codes, statutes, rules, regulations and standards demonstrates that due

care was exercised with respect to the design, manufacture, testing, marketing and sale of the ATTUNE® product, and that Defendants are entitled to a presumption that the ATTUNE® product is neither defective, nor unreasonably dangerous. Plaintiff's claims and any recovery are accordingly barred.

- 10. Plaintiff's claims should be diminished in whole or in part by the amount paid to Plaintiff by any party or non-party with whom Plaintiff has settled or may settle.
- 11. Plaintiff's damages, if any, are barred or limited by the payments received from collateral sources.
 - 12. Plaintiff's causes of action are barred by the learned intermediary doctrine.
- 13. Plaintiff's claims are barred by the doctrines of informed consent, release and waiver.
- 14. Upon information and believe, if Plaintiff incurred any injuries or damages as a result of Plaintiff's use of the ATTUNE® product, which Defendants deny, such injuries or damages were due to an alternative cause, without any negligence or culpable conduct by the Defendants. NOTE: Plaintiff objects to this asserted defense.
- 15. To the extent Plaintiff's claims are based on alleged misrepresentations or omissions made to the FDA, such claims are barred pursuant to *Buckman Co. v. Plaintiff's Legal Comm.*, 531 U.S. 341 (2001).
- 16. If the ATTUNE® product is unsafe in any way, it was unavoidably unsafe. Plaintiff's action is, therefore, barred by Comment K of §402A of the Restatement (Second)

of Torts and/or other applicable law. See Hahn v. Richter, 543 Pa. 558, 673 A.2d 888 (1996).

- 17. Plaintiff's injuries and damages, if any, were proximately caused by the negligence or fault of Plaintiff, or persons or parties whose identities are unknown at this time, and such comparative negligence or fault is sufficient to proportionately reduce or bar Plaintiff's recovery.
- 18. Even if there was negligence on its part in the manufacture and sale of the ATTUNE® product, which Defendants expressly deny, such negligence was not the proximate or producing cause of the alleged injuries or damage.
- 19. The injuries and damages claimed by Plaintiff, if any, were caused in whole or in part by the acts or omissions of persons or entities over whom Defendants have no control or right of control.
- 20. Plaintiff's claims should be dismissed, reduced, offset, or barred in accordance with the principles of comparative negligence.
- 21. Plaintiff's claims are barred in whole or in part under Sections 2, 4, 6(c), and 6(d) of the Restatement (Third) of Torts: Product Liability.

ADMITTED FACTS

The following facts are admitted by the Parties:

1. On October 2, 2013, Plaintiff underwent a right total knee arthroplasty to treat his osteoarthritis. As part of the total knee arthroplasty procedure, his surgeon, Dr.

William Barrett, implanted the ATTUNE® Knee System, which was designed, manufactured, and sold by the Defendants.

- 2. Plaintiff underwent a left total knee arthroplasty on August 13, 2014 to treat the osteoarthritis in his left knee. During this August 13, 2014 arthroplasty surgery, Plaintiff was implanted with the ATTUNE® Knee System in his left knee.
- 3. On January 23, 2019, Plaintiff returned to Dr. Barrett's office complaining of left knee pain and was seen by Jana Flener, PA-C, who ordered x-ray imaging of Plaintiff's left knee.
 - 4. Dr. Barrett recommended Plaintiff proceed with a revision surgery.
- 5. The pre-operative and post-operative diagnosis for Plaintiff's March 19, 2019 revision surgery was "failed fixation of left total knee."
- 6. On March 19, 2019, Plaintiff underwent a revision of his left knee wherein the ATTUNE® Knee System that was implanted in his left knee on August 13, 2014 was removed and replaced.

ISSUES OF LAW

The following are the issues of law to be determined by the court:

(a) Whether Defendants are liable to Plaintiff under the Washington Product Liability Act for Plaintiff's harm and damages resulting from the allegedly defective design of the tibial component of the ATTUNE® Knee System implanted in his left leg in 2014, as set forth in his Second Amended Complaint, proximately caused by the fact that the Attune Device was not reasonably safe as designed.

(b) Whether Defendants are liable to Plaintiff under the Washington Product Liability Act for damages resulting from their alleged failure to warn Plaintiff's surgeon, Plaintiff², and Valley Medical Center, the alleged purchaser of the ATTUNE® Knee Systems that were implanted in Plaintiff's knees, of the alleged risks associated with the ATTUNE® Knee System and, in particular, the tibial base thereof. Plaintiff's Second Amended Complaint alleges:

135. The Defendants manufactured and sold the ATTUNE Device knowing the device would then be implanted in patients in need of a knee prostheses.

136. In the course of doing so, Defendants advertised, marketed and promoted the ATTUNE to consumers, including the medical community, the hospital, Plaintiff's implanting surgeon, and Plaintiff, and therefore had a duty to warn them of the risks associated with the use of the ATTUNE.

140. The Defendants were under a duty to issue such warnings or instructions as a reasonably prudent manufacturer would issue in the same or similar circumstances but failed to do so.

Defendants object to Plaintiff's second proposed issue of law to the extent it includes Valley Medical Center, as Valley Medical Center is not a Defendant or party to this case, no claims or allegations were asserted by Plaintiff against Valley Medical Center, and the Court

² As of the date of filing this Pre-Trial Statement (September 12, 2023), Defendants' motion for summary judgment remains pending. One of the issues pending before the Court in Defendants' motion for summary judgment is the applicability of the learned intermediary doctrine. Under the learned intermediary doctrine, the Defendants' duty to warn extends only to the Plaintiff's physician. In filing this Pre-Trial Statement, Defendants do not waive and expressly reserve all arguments and defenses as to the applicability of the learned intermediary doctrine, which they intend to address further in pre-trial and trial briefings.

rejected this theory of liability as it pertains to Valley Medical Center at the hearing on Defendants' motion for summary judgment.

(c) Whether Plaintiff's claims are barred by the applicable statute of limitations.

Note: Plaintiff objects to this issue of law.

EXPERT WITNESSES

- (a) Each party shall be limited to the expert witnesses previously listed in their respective Rule 26(a)(2) disclosures.
- (b) The name(s) and addresses of the expert witness(es) to be used by each party at the trial are, and the issue upon which each will testify is³:

(1) On behalf of Plaintiff:

Witness	Status	General Nature of Expected Testimony	√ if by Deposition
Peter Bonutti, MD Bonutti Clinic 1303 W Evergreen Ave Suite 200 Effingham, Illinois 62401	Will testify.	Expert opinion previously provided and all matters relating thereto. Nature and cause of failure of Plaintiff's left knee Attune tibial base and defective design of Attune tibial base as set forth in Expert Report.	
Michael F. Arrigo 620 Newport Center Drive Suite 1100 Newport Beach, CA 92660	Will testify.	Expert opinion previously provided and all matters relating thereto. Usual, customary and reasonable charges for pain care and left knee revision surgery as set forth in Expert Report.	

³ Defendants' Motion to Exclude the Report and Opinions of Plaintiff's Expert, Dr. Bonutti, remains pending. In filing this Pre-Trial Statement, Defendants do not waive and expressly reserve all arguments and objections to Plaintiff's introduction of the report and opinions of Dr. Bonutti at trial.

(2) On behalf of Defendants:

Witness	Status	Nature of Expected Testimony	√ if by Deposition
Michael Ries, M.D., Sc.M. c/o Defendants	Will Testify.	Expert opinion previously provided and all matters relating thereto. The design, function, safety, and effectiveness of the ATTUNE® based on preclinical testing, registry data, and scientific literature. The risks associated with total knee arthroplasties.	Deposition
Chantal E. Holy, Ph.D., MSc. c/o Defendants	Will Testify.	Expert opinion previously provided and all matters relating thereto. Registry data and scientific literature setting forth the causes of and revision rates for total knee arthroplasties. Risks associated with total knee arthroplasties and prevalence in the scientific literature and registry data.	

OTHER WITNESSES

The names and addresses of witnesses, other than experts, to be used by each party at the time of trial and the general nature of the testimony of each are:

(a) On behalf of Plaintiff:

Witness	Status	General Nature of Expected	$\sqrt{\mathbf{if}\mathbf{by}}$
		Testimony	Deposition
Derrick C. Bosley	Will testify.	Left and right knee implant	
12046 69 th Ave S		surgeries; failure of left knee	
Seattle WA 98178		implant; left knee revision	
		surgery; post left knee implant	
		surgery disability, pain, pain	
		treatment, dependence on and	
		addiction to pain medication,	
		effects on wife and family,	
		relationships with same,	
		quality of life; treatment for	

1			reduction of dependence on
			pain medication and
2			withdrawal from same; lost of
3			potential earning capacity;
3			continuing and long terms
4			effects of failure of left knee
•			implant.
5	Sandra Bosley	Will testify.	Left and right knee implant
	12046 69 th Ave S		surgeries; failure of left knee
6	Seattle WA 98178		implant; left knee revision
7			surgery; post left knee implant
7			surgery disability, pain, pain
8			treatment, dependence on and
			addiction to pain medication,
9			effects on wife and family,
			relationships with same,
10			quality of life; treatment for
11			reduction of dependence on
11			pain medication and
12			withdrawal from same;
			continuing and long terms
13			effects of failure of left knee
			implant
14	Liam Rowley	Will testify by	30(b)(6) deposition testimony;
15	c/o Defendants	30(b)(6) deposition	agreement with Dr. Bonutti's
13		testimony.	Expert Witness Report and
16		i commony.	article relating to omission of
			surface roughness and
17			undercut cement pockets of
1.0			predecessor Sigma in the
18			subject tibial base; and all
19			matters listed on Second
17			Amended Attachment A to
20			Third Amended Notice of
			Defendants' Deposition
21			Pursuant to Fed. R. Civ. P.
ລ. ∥			30(B)(6) designated by
22			Defendants to be addressed by
23			this witness.
	Dr. Daniel Hoeffel,	Will testify by	30(b)(6) deposition testimony;
24	MD	30(b)(6) deposition	agreement with Dr. Bonutti's
	c/o Defendants	testimony.	Expert Witness Report and
25		,	article relating to omission of
26			surface roughness and
26		l	

1			undercut cement pockets of
2			predecessor Sigma in the
2			subject tibial base; and all
3			matters listed on Second
			Amended Attachment A to
4			Third Amended Notice of
_ ا			Defendants' Deposition
5			Pursuant To Fed. R. Civ. P.
6			30(B)(6) designated by
			Defendants to be addressed by
7		D 111 1	this witness.
	Alexey Ryskin, MD	Possible witness	Plaintiff's pain, pain
8	Seattle Pain Relief	only.	medication dependence and
9	10564 5 th Avenue NE		addiction, pain relief and pain
	#304		medication reduction
10	Seattle, WA 98125	Danail-1	treatment.
	Navdeep Kaur, MD VIVAA	Possible witness	Plaintiff's pain, pain
11	1301 4th Ave NW	only.	medication dependence and
12			addiction, pain relief and pain medication reduction
12	#302, Issaquah, WA 98027		
13	Zachary Kile, PA-C or	Possible witness	treatment. Plaintiff's pain, pain
	other representative	only.	medication dependence and
14	Anesis Spine & Pain	omy.	addiction, pain relief and pain
15	Care		medication reduction
13	801 SE 16th Street,		treatment.
16	Ste 121		d'outilienc.
	Renton, WA 98057		
17			
18	William P. Barrett,	Possible witness	Plaintiff's left knee
10	MD	only.	examinations, surgeries and
19		,	records; and disposal of
	Surgeons		Plaintiff's left knee implant;
20	4011 Talbot Road S.,		selected portions of deposition
21	#300		testimony; and Valley Medical
21	Renton, WA 98055		Center's purchase from
22			Defendants of Attune Knee
_			System implanted in
23			Plaintiff's left knee
24			
24	Jana Flener, PA	Possible witness	Plaintiff's left knee
25	c/o Counsel for	only.	examinations, surgeries and
	Defendants		records; including, but not
26			limited to, Plaintiff's 1-29-

		2015 and 1-23-2019 x-rays
		and 1-23-2019 x-ray findings
Christian Campbell	Will testify.	MAUDE reports research
4037 SE 11 th St.,		findings on loosening
Renton, WA 98058		/debonding of subject tibial
(Paralegal to		base, source and obtaining of
Plaintiff's Counsel)		Openpayments.cms.gov
		Listing of Payments to Dr.
		William P. Barrett, MD, 2015-
		2022 and FDA 510(k)
		K101433 and K170806
	D 11.1	Applications and Summaries
Representative of	Possible witness	Valley Medical Center's
Valley Medical Center	only.	purchase from Defendants of
400 S 43rd St		Attune Knee System
Renton, WA 98055		implanted in Plaintiff's left
		knee

Witness	Status	Nature of Expected Testimony	√ if by Deposition
William P. Barrett, MD Proliance Orthopedic Surgeons 4011 Talbot Road S., #300 Renton, WA 98055	Will testify	Plaintiff's total knee arthroplasties and revision surgery. Plaintiff's comorbidities and risks for surgery. The ATTUNE® device.	
Jana Flener, P.A. c/o Defendants	Possible witness only	Plaintiff's total knee arthroplasties and revision surgery. Plaintiff's comorbidities and risks for surgery.	
Liam Rowley, M.S. c/o Defendants	Will Testify	30(b)(6) testimony.	
Daniel Hoeffel, M.D. c/o Defendants	Will Testify	30(b)(6) testimony.	

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(a) Plaintiff's Exhibits

EXHIBITS

Plaintiff's Exhibits					
Ex. #	Description	Authenticity	Admissibility	Objection	Admitted
1	Plaintiff's Proliance Surgeon's Medical Records	Stipulated	Stipulated		
2	Plaintiff's Proliance Surgeon's Billing Records	Stipulated	Disputed	FRE 402; FRE 403; FRE 802	
3	Plaintiff's Valley Medical Center Medical Records	Stipulated	Stipulated		
4	Plaintiff's Valley Medical Center Billing Records	Stipulated	Disputed	FRE 402; FRE 403; FRE 802	
5	Plaintiff's VIVAA Medical Records	Stipulated	Stipulated		
6	Plaintiff's Anesis Spine & Pain Care Medical Records	Stipulated	Stipulated		
7	Plaintiff's Anesis Spine & Pain Care Billing Records	Stipulated	Disputed	FRE 402; FRE 403; FRE 802	
8	Plaintiff's Seattle Pain Relief Medical Records	Stipulated	Stipulated		
9	Plaintiff's Seattle Pain Relief Billing Records	Stipulated	Disputed	FRE 402; FRE 403; FRE 802	
10	Plaintiff's x-rays 10/9/2014	Disputed	Disputed	Duplicative of Exhibit No. 1; Attorney Work Product (compilation/excerpt); FRE 802	

1 2 3 4 5 6 7	11	Selected Medical Records	Disputed	Disputed	Duplicative of Exhibits No. 1, 3, 13, 16, 21, 22, 23, 24; Attorney Work Product (compilation, highlighting, notes); FRE 802
8 9 10 11	12	FDA 510(k) K101433 Summary (2010)	Disputed	Disputed	FRE 802; No Certification of Authenticity; Foundation; FRE 402; FRE 403
12 13 14 15 16	13	Implants Inventory 8/13/2014 left knee implant	Disputed	Disputed	Duplicative of Exhibit No. 3; Attorney Work Product (compilation/ excerpt); FRE 802
17 18 19 20 21 22	14	DePuy Outcomes Tracking System Knee Device Log	Disputed	Disputed	Duplicative of Exhibit No. 1; Attorney Work Product (compilation/ excerpt); FRE 802

1 2 3 4 5	15	Valley Medical Center - Surgical Implant Record	Disputed	Disputed	Duplicative of Exhibit No. 3; Attorney Work Product (compilation/ excerpt); FRE 802
6 7 8 9 10	16	Operative Report, William P. Barrett, MD 8/13/2014	Disputed	Disputed	Duplicative of Exhibits No. 1, 3; Attorney Work Product (compilation/ excerpt); FRE 802
12 13 14 15 16	17	Left Knee Pain Treatments after Implant	Disputed	Disputed	Duplicative of Exhibits No. 1, 5, 6; Attorney Work Product (compilation/ excerpt); FRE 802
17 18 19 20 21	18	Plaintiff's x-rays 1/29/2015	Disputed	Disputed	Duplicative of Exhibit No. 1; Attorney Work Product (compilation/ excerpt); FRE 802

			1	1	
1					Duplicative
2					of Exhibit
_					No. 1;
3	19	Plaintiff's x-rays	Diamutad	Diamytad	Attorney Work
4	19	1/23/2019	Disputed	Disputed	Product
4					(compilation/
5					excerpt);
					FRE 802
6					Duplicative
7					of Exhibit
		1/23/2019 Jana			No. 1;
8	20	Flener PA-C X-ray	Disputed	Disputed	Attorney
9		Findings Note	2 isp area	2 isputed	Work
9					Product
10					(compilation); FRE 802
1.1					Duplicative Duplicative
11					of Exhibit
12					No. 1;
	21	3/12/2019 David	D' 1	D: 1	Attorney
13	21	Gifford PA-C Note	Disputed	Disputed	Work
14					Product
14					(compilation)
15					; FRE 802
1.0		Operative Note,			Duplicative
16		William P. Barrett,			of Exhibits
17		MD 3/25/2019 (for			No. 1, 3;
		3/19/2019),			Attorney Work
18	22	including but not	Disputed	Disputed	Product
19		limited to			(compilation/
		Preoperative and			excerpt,
20		Postoperative Diagnoses			highlighting)
21		Diagnoses			; FRE 802
21					Duplicative
22					of Exhibit
	23	2/21/2010 D: 1			Nos. 1, 3;
23		3/21/2019 Discharge	Disputed	Disputed	Attorney Work
24		Summary	•		Product
					(compilation)
25					; FRE 802
26		1	<u> </u>	1	, , , , , , , , , , , , , , , , , , , ,
20					

1 2 3 4 5 6	24	3/21/2019 Final Diagnoses	Disputed	Disputed	Duplicative of Exhibit Nos. 1, 3; Attorney Work Product (compilation, highlighting, notes); FRE 802
7 8 9 10 11	25	Photograph Fig. 1 Bonutti et al J Knee Surg 2017	Disputed	Disputed	MIL; FRE 702/Daubert; FRE 402; FRE 403; FRE 802; Attorney Work Product
12 13 14 15	26	Photographs Figs. 2,3,4 Bonutti et al J Knee Surg 2017	Disputed	Disputed	MIL; FRE 702/Daubert; FRE 402; FRE 403; FRE 802; Attorney Work Product
1617181920	27	Photographs Figs.1, 2,3,4 Bonutti J Knee Surg 2018	Disputed	Disputed	MIL; FRE 702/Daubert; FRE 402; FRE 403; FRE 802; Attorney Work Product
2122232425	28	Fig. 1 Arthroplasty Today 17 (2022)	Disputed	Disputed	MIL; FRE 702/Daubert; FRE 402; FRE 403; FRE 802; Attorney Work Product

1 2 3 4 5	29	Fig. 2 Arthroplasty Today 17 (2022)	Disputed	Disputed	MIL; FRE 702/Daubert; FRE 402; FRE 403; FRE 802; Attorney Work Product
6 7 8 9	30	FDA 510(k) K170806 Summary (2017)	Disputed	Disputed	MIL; FRE 802; No Certification of Authenticity; Foundation; FRE 402; FRE 403
101112	31	Dr. William P. Barrett Testimonial Video notes	Disputed	Disputed	MIL; FRE 802; Foundation; FRE 402; FRE 403
131415	32	Openpayments.cms. gov Listing of Payments to Dr. William P. Barrett, MD, 2015-2022	Disputed	Disputed	MIL; FRE 802; Foundation; FRE 402; FRE 403
1617181920	33	Defendants' Response to Interrogatory No. 3	Stipulated	Disputed	Duplicative of Exhibit No. 48; Attorney Work Product (excerpt/com pilation)
21	34	Attune Package Insert	Stipulated	Stipulated	
22232425	35	Deposition of William Barrett, M.D. Bosley v. DePuy Synthes Sales, Inc., et al. April 27, 2023	Stipulated	Disputed	FRE 802

1 2	36	Peter M. Bonutti, MD, FACS	Stipulated	Disputed	FRE 802; MIL
3 4 5	37	Curriculum Vitae 30(b)(6) Deposition of Liam Rowley Bosley v. DePuy Synthes Sales, Inc.,	Stipulated	Disputed	FRE 802
6 7 8	38	et al. May 23, 2023 Deposition of 30(b)(6) Daniel P. Hoeffel, M.D., Bosley v. DePuy Synthes Sales, Inc., et al. June 6, 2023	Stipulated	Disputed	FRE 802
9 10 11 12	39	William P. Barrett, MD picture from Defendants' ATTUNE promotional video, Surgeon Design Team	Disputed	Disputed	FRE 802; Foundation; MIL; FRE 402; FRE 403
13 14 15 16 17	40	Jana Flener, PA-C, 9-18-2013 Note	Disputed	Disputed	Duplicative of Exhibit No. 1; Attorney Work Product (compilation) ; FRE 802
18 19 20 21 22	41	Jana Flener, PA-C, 1-9-2014 Note	Disputed	Disputed	Duplicative of Exhibit No. 1; Attorney Work Product (compilation) ; FRE 802

42	Olivia Kenyon, PA- C, 7-24-2014 Note	Disputed	Disputed	Duplicative of Exhibit No. 1; Attorney Work Product (compilation) ; FRE 802
43	Derrick Bosley BMI-Weight Chart, 8-17-2012 to 2-21- 2019	Disputed	Disputed	Attorney Work Product (compilation) ; FRE 802
44	William P. Barrett, MD, 10-30-2014, Note	Disputed	Disputed	Duplicative of Exhibit No. 1; Attorney Work Product (compilation) ; FRE 802
45	William P. Barrett, MD, 1-29-2015, Note	Disputed	Disputed	Duplicative of Exhibit No. 1; Attorney Work Product (compilation) ; FRE 802
46	DePuy Defendants' Responses to Plaintiff's Requests for Admission	Stipulated	Disputed	Foundation; FRE 402; FRE 403
47	William P. Barrett Testimonial Video	Disputed	Disputed	FRE 802; Foundation; MIL; FRE 402; FRE 403
48	Defendants' Response to Plaintiff's First Interrogatories	Stipulated	Disputed	Foundation; FRE 402; FRE 403
	43 44 45 46 47	Derrick Bosley BMI-Weight Chart, 8-17-2012 to 2-21- 2019 William P. Barrett, MD, 10-30-2014, Note William P. Barrett, MD, 1-29-2015, Note DePuy Defendants' Responses to Plaintiff's Requests for Admission William P. Barrett Testimonial Video Defendants' Response to Plaintiff's First	Derrick Bosley BMI-Weight Chart, 8-17-2012 to 2-21- 2019 William P. Barrett, MD, 10-30-2014, Note William P. Barrett, MD, 1-29-2015, Note DePuy Defendants' Responses to Plaintiff's Requests for Admission Defendants' Response to Plaintiff's First Disputed Stipulated Defendants' Response to Plaintiff's First Stipulated	Derrick Bosley BMI-Weight Chart, 8-17-2012 to 2-21- 2019 William P. Barrett, MD, 10-30-2014, Note Disputed Disputed

1 2		Derrick C. Bosley, Sr., Hospital			Duplicative of Exhibit No. 4;
3	49	Services Account	Disputed	Disputed	Attorney Work
4		Detail, 8-13-2014 to 8-15-2014			Product
_		0-13-2014			(compilation)
5					; FRE 802
6					Substance of proposed
_		NOTICE OF			exhibit is
7		INTENT TO			duplicative
8		OFFER RECORDS			of Exhibits
	50	AT TRIAL OR	Stipulated	Disputed	No. 6 and 7;
9		HEARING – Anesis	1	1	FRE 402;
10		Spine and Pain Care			FRE 403;
10		F.R.E. 902(11)			Attorney
11					Work
10					Product
12					Substance of
13		NOTICE OF			proposed exhibit is
		INTENT TO			duplicative
14		OFFER RECORDS			of Exhibits
15	51	AT TRIAL OR	Stipulated	Disputed	No. 1 and 2;
10		HEARING –	•	1	FRE 402;
16		Proliance Surgeons			FRE 403;
17		F.R.E. 902(11)			Attorney
1 /					Work
18		NOTICE OF			Product
10		NOTICE OF INTENT TO			Substance of proposed
19		OFFER RECORDS			proposed exhibit is
20		AT TRIAL OR			duplicative
		HEARING – Seattle			of Exhibits
21	52	Pain Relief F.R.E.	Stipulated	Disputed	No. 8 and 9;
22		902(11) (to be			FRE 402;
		provided upon			FRE 403;
23		transmission of			Attorney
24		records to			Work
∠ - T		Defendants)			Product

NOTICE OF INTENT TO OFFER RECORDS AT TRIAL OR HEARING - VIVAA PLLC F.R.E. 902(11) NOTICE OF INTENT TO OFFER RECORDS NOTICE OF HEARING - VIVAA PLLC F.R.E. 902(11) NOTICE OF INTENT TO OFFER RECORDS AT TRIAL OR Product NOTICE OF INTENT TO OFFER RECORDS AT TRIAL OR HEARING - Valley OFFER RECORDS AT TRIAL OR HEARING - Valley OF Exhibits Substance of proposed exhibit is duplicative of Exhibits Substance of product Substance of produ						
NOTICE OF INTENT TO OFFER RECORDS AT TRIAL OR HEARING - VIVAA PLLC F.R.E. 902(11) NOTICE OF INTENT TO OFFER RECORDS NOTICE OF INTENT TO OFFER RECORDS AT TRIAL OR F.R.E. 902(11) NOTICE OF INTENT TO OFFER RECORDS AT TRIAL OR HEARING - Valley Medical Center F.R.E. 902(11) (to be provided upon transmission of records to Defendants) Seract Payments Received Columbia Physical Therapy Ledger 2018 No. 5; FRE 402; FRE duplicative of Exhibit is duplicative of	1					Substance of
NOTICE OF Stipulated Disputed No. 5; FRE HEARING - VIVAA PLLC F.R.E. 902(11) NOTICE OF INTENT TO OFFER RECORDS Attorney Work Product						proposed
OFFER RECORDS AT TRIAL OR HEARING — VIVAA PLLC F.R.E. 902(11) NOTICE OF INTENT TO OFFER RECORDS AT TRIAL OR HEARING — VIVAA PLLC F.R.E. 902(11) NOTICE OF INTENT TO OFFER RECORDS AT TRIAL OR HEARING — Valley Medical Center F.R.E. 902(11) (to be provided upon transmission of records to Defendants) Seract Payments Received Columbia Physical Therapy Ledger 2018 Stipulated Disputed OF Exhibit No. 5; FRE 402; FRE duplicative of Exhibits No. 3 and 4; FRE 402; FRE 403; Attorney Work Product MIL; FRE 402; FRE 403 FRE 403;	2		NOTICE OF			
Stipulated Disputed Of Exhibit	3					-
HEARING - VIVAA PLLC F.R.E. 902(11)						
VIVAA PLLC F.R.E. 902(11) NOTICE OF INTENT TO OFFER RECORDS AT TRIAL OR HEARING – Valley Medical Center F.R.E. 902(11) (to be provided upon transmission of records to Defendants) Seract Payments Received Columbia Physical Therapy Ledger 2018 VIVAA PLLC F.R.E. 902(11) 403; Attorney Work Product Substance of proposed exhibit is duplicative of Exhibits No. 3 and 4; FRE 402; FRE 403; Attorney Work Product MIL; FRE 403 FRE 403 FRE 403 FRE 403 FRE 403; FRE 802	4	53		Stipulated	Disputed	-
F.R.E. 902(11) Substance of proposed exhibit is duplicative of Exhibits HEARING – Valley Medical Center F.R.E. 902(11) (to be provided upon transmission of records to Defendants) Seract Payments Received Columbia Physical Transpured Trans	5					
Work Product NOTICE OF INTENT TO OFFER RECORDS AT TRIAL OR HEARING – Valley Medical Center F.R.E. 902(11) (to be provided upon transmission of records to Defendants) Seract Payments Received Columbia Physical Therapy Ledger 2018 Work Product Substance of proposed exhibit is duplicative of Exhibits No. 3 and 4; FRE 402; FRE 403; Attorney Work Product MIL; FRE 402; FRE 403 FRE 402; FRE 403 FRE 403; FRE	3					
NOTICE OF INTENT TO OFFER RECORDS AT TRIAL OR HEARING – Valley Medical Center F.R.E. 902(11) (to be provided upon transmission of records to Defendants) Seract Payments Received Columbia Physical Therapy Ledger 2018 Product Substance of proposed exhibit is duplicative of Exhibits No. 3 and 4; FRE 402; FRE 403; Attorney Work Product MIL; FRE 402; FRE 403 FRE 402; FRE 403 FRE 402; FRE 403 FRE 403; FRE 802	6		F.R.E. 902(11)			1
NOTICE OF INTENT TO OFFER RECORDS AT TRIAL OR HEARING – Valley Medical Center F.R.E. 902(11) (to be provided upon transmission of records to Defendants) Substance of proposed exhibit is duplicative of Exhibits No. 3 and 4; FRE 402; FRE 403; Attorney Work Product MIL; FRE 402; FRE 403 Columbia Physical Therapy Ledger 2018 Substance of proposed exhibit is duplicative of Exhibits No. 3 and 4; FRE 402; FRE 403; Attorney FRE 403; FRE 802	_					
INTENT TO OFFER RECORDS AT TRIAL OR HEARING – Valley Medical Center F.R.E. 902(11) (to be provided upon transmission of records to Defendants) Seract Payments Received Columbia Physical Therapy Ledger 2018 INTENT TO OFFER RECORDS AT TRIAL OR HEARING – Valley Stipulated Disputed Disputed Disputed Disputed Disputed Disputed FRE 402; FRE 402; FRE 403 FRE 402; FRE 403 FRE 403; FRE 4	7		NOTICE OF			
OFFER RECORDS AT TRIAL OR HEARING – Valley Medical Center F.R.E. 902(11) (to be provided upon transmission of records to Defendants) Seract Payments Received Columbia Physical Therapy Ledger Total Columbia Physical Total Columbia Ph	8					
HEARING – Valley Medical Center F.R.E. 902(11) (to be provided upon transmission of records to Defendants) Seract Payments Received Columbia Physical Therapy Ledger 2018 Stipulated Disputed Disputed Disputed Disputed Disputed Disputed Disputed Disputed FRE 402; FRE 403 MIL; FRE 403 FRE 402; FRE 403; FRE 403; FRE 403; FRE 403; FRE 403; FRE 802						
Medical Center F.R.E. 902(11) (to be provided upon transmission of records to Defendants) Stipulated Disputed No. 3 and 4; FRE 402; FRE 403; Attorney Work Product MIL; FRE 402; FRE 403 Product MIL; FRE 403 Columbia Physical Therapy Ledger 2018 Stipulated Disputed Disputed FRE 402; FRE 403 FRE 402; FRE 403 FRE 403; FRE 403; FRE 802	9		AT TRIAL OR			duplicative
F.R.E. 902(11) (to be provided upon transmission of pefendants) Seract Payments Received Columbia Physical Columbia Physical Therapy Ledger 2018 Supulated Disputed No. 3 and 4; FRE 402; FRE 403; Attorney Work Product MIL; FRE 402; FRE 403; August Product MIL; FRE 403; FRE 403; FRE 403; FRE 403; FRE 802	10		_			
be provided upon transmission of records to Defendants) Seract Payments Received Columbia Physical Therapy Ledger 2018 FRE 403; Attorney Work Product MIL; FRE 403; Attorney Work Product MIL; FRE 403; FRE 402; FRE 403; FRE 403; FRE 403; FRE 403; FRE 403; FRE 802	10	54		Stipulated	Disputed	- I
transmission of records to Defendants) Seract Payments Received Columbia Physical Therapy Ledger 2018 Attorney Work Product MIL; FRE 402; FRE 403 FRE 402; FRE 403; FRE 802	11					1
records to Defendants) Seract Payments Received Columbia Physical Therapy Ledger 2018 Disputed Work Product MIL; FRE 402; FRE 403 FRE 402; FRE 403; FRE 802						
Defendants) Defendants) Seract Payments Received Disputed Disputed Disputed Disputed FRE 402; FRE 403; FRE 403; FRE 802	12					1
Seract Payments Received Disputed Disputed Disputed MIL; FRE 402; FRE 403 Columbia Physical Therapy Ledger 2018 Stipulated Disputed FRE 402; FRE 403; FRE 802	13					
15 Seract Payments Received Disputed 402; FRE 403 Columbia Physical Therapy Ledger Stipulated Disputed FRE 403; FRE 403; FRE 802			Defendants)			
15 Received	14	55	_	Disputed	Disputed	
Columbia Physical Therapy Ledger Stipulated Disputed FRE 402; FRE 403; FRE 802	15	33	Received	Disputed	Disputed	
16 56 Therapy Ledger Stipulated Disputed FRE 403; FRE 802	13		Columbia Physical			
2018 FRE 802	16	56	1	Stipulated	Disputed	
MIL; FRE	1.7		1		1	
	17					MIL; FRE
18 702/Daubert;	18					·
Fynert Witness FRE 402;			Expert Witness			
19 57 Report of Peter Stinulated Disputed FRE 403;	19	57	1	Stipulated	Disputed	
Bonutti MD	20			1	1	
Attorney	20		,			1
21 Work Product	21					
NOT THE	2.0					+
22 MIL; FRE 402; FRE	22					
23 Expert Witness 403; FRE	23		Expert Witness			
58 Report of Michael Stipulated Disputed 802;		58	1 -	Stipulated	Disputed	
24 Arrigo Attorney	24		1 *	1	1	
Work Product	25					•
23 Product	23					Product
26	26					

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	Without waiving Plaintiff's objections to Defendants' proposed exhibits which Defendants did not list in their Amended Pretrial Statement in accordance with LCR 16(i) but have listed in this proposed Pretrial Order, Plaintiff lists, as Learned Treatises, Periodicals, or Pamphlets the following articles cited in the Expert Witness Report of Peter Bonutti, MD, on which Dr. Bonutti may rely or to which he may refer in his testimony at trial pursuant to FRE Rule 803(18), which Expert Witness Report is listed in Plaintiff's Pretrial Statement and this exhibit list:	Disputed	Disputed	FRE 802; Foundation; MIL; FRE 402; FRE 403	
20 21	https://onlinelibrary. wiley.com/doi/pdf/1 0.1111/ans.16046;	Disputed	Disputed	FRE 802; Foundation; MIL; FRE 402; FRE 403	
22232425	https://read.qxmd.co m/keyword/173027	Disputed	Disputed	FRE 802; Foundation; MIL; FRE 402; FRE 403	
25		1			

1 2 3	https://www.drugwat ch.com/knee- replacement/depuy- attune/	Disputed	Disputed	FRE 802; Foundation; MIL; FRE 402; FRE 403
4	https://www.cureus.			
5	com/articles/66018- early-aseptic-failure-			FRE 802;
6	of-the-tibial- component-cement-	Disputed	Disputed	Foundation; MIL; FRE
7	interface-in-attune-	Disputed	Disputed	402; FRE
8	total-knee- arthroplasty-a-			403
	report-of-three-cases			
9	https://online.bonean			FRE 802; Foundation;
10	<u>djoint.org.uk/doi/abs</u> /10.1302/1358-	Disputed	Disputed	MIL; FRE
11	992X.2020.9.067;			402; FRE 403
12	https://www.arthropl			FRE 802;
13	astyjournal.org/articl e/S0883-	Disputed	Disputed	Foundation; MIL; FRE
14	5403(20)30827- 5/pdf	Disputed	Бізрасса	402; FRE 403
15	https://pdfs.semantic			
16	scholar.org/b088/f29 09e1d352b8680e2ab			FRE 802;
17	28f2afe5fd2e461d.p			Foundation;
	df?_ga=2.39694947. 1934483757.167553	Disputed	Disputed	MIL; FRE 402; FRE
18	8345-			403
19	981525284.1675538 345			
20				FRE 802;
21	https://www.ncbi.nl m.nih.gov/pmc/articl	Disputed	Disputed	Foundation; MIL; FRE
22	es/PMC9508148/		_ 10p 500 0	402; FRE 403
23	https://www.arthropl			FRE 802;
24	astyjournal.org/articl e/S0883-	Disputed	Disputed	Foundation; MIL; FRE
25	5403(17)30737- 4/fulltext	Dispated	Disputed	402; FRE 403
26	1. AVVANVALAV			

1 2 3	https://pubmed.ncbi.nlm.nih.gov/36209439/	Disputed	Disputed	FRE 802; Foundation; MIL; FRE 402; FRE 403
456	https://pubmed.ncbi. nlm.nih.gov/298965 62/	Disputed	Disputed	FRE 802; Foundation; MIL; FRE 402; FRE 403
7 8 9	https://www.mattioli 1885journals.com/in dex.php/actabiomedi ca/article/download/ 8997/8361/40668	Disputed	Disputed	FRE 802; Foundation; MIL; FRE 402; FRE 403
10 11 12	https://scholarlypubl ications.universiteitl eiden.nl/access/item %3A3483966/downl oad	Disputed	Disputed	FRE 802; Foundation; MIL; FRE 402; FRE 403
13 14 15	https://www.ncbi.nl m.nih.gov/pmc/articl es/PMC5994597/	Disputed	Disputed	FRE 802; Foundation; MIL; FRE 402; FRE 403
16 17 18 19	https://www.arthropl astyjournal.org/articl e/S0883- 5403(20)31163- 3/fulltext	Disputed	Disputed	FRE 802; Foundation; MIL; FRE 402; FRE 403
2021				
2223242526	Without waiving Plaintiff's objections to Defendants' proposed exhibits which Defendants did not list in their Amended Pretrial Statement in accordance with LCR 16(i) but have	Disputed	Disputed	FRE 802; Foundation; MIL; FRE 402; FRE 403

1	listed in this			
2	proposed Pretrial Order, Plaintiff lists,			
	as Learned Treatises,			
3	Periodicals, or Pamphlets the			
4	following articles not			
5	cited in the Expert			
5	Witness Report of Peter Bonutti, MD,			
6	but on which Dr.			
7	Bonutti may rely or to which he may			
0	refer in his testimony			
8	pursuant to FRE Rule 803(18) at trial:			
9	,			FRE 802;
10	https://pubmed.ncbi.nlm.nih.gov/2859193	D: 4 1	D: 4 1	Foundation;
	0/	Disputed	Disputed	MIL; FRE 402; FRE
11	_			403
12	https://www.cureus.c			
13	om/articles/66018- early-aseptic-failure-			
	of-the-tibial-			FRE 802;
14	component-cement-	Disputed	Disputed	Foundation; MIL; FRE
15	interface-in-attune-	Disputed	Disputed	402; FRE
16	total-knee- arthroplasty-a-report-			403
	of-three-cases#!/			
17	1.0. //			EDE 002
18	https://www.jnjmedte ch.com/en-			FRE 802; Foundation;
19	US/product/attune-s-	Disputed	Disputed	MIL; FRE
	technology	-	-	402; FRE
20				403 EDE 202.
21	https://www.ncbi.nl			FRE 802; Foundation;
22	m.nih.gov/pmc/articl	Disputed	Disputed	MIL; FRE
	es/PMC6446526/			402; FRE
23				403

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1 2 3 4	https://patents.google .com/patent/US9498 342B2/en?oq=94983 42	Disputed	Disputed	FRE 802; Foundation; MIL; FRE 402; FRE 403
5 6 7 8	https://www.mddionline.com/news/how-510k-submission-can-affect-your-patent	Disputed	Disputed	FRE 802; Foundation; MIL; FRE 402; FRE 403
9 10 11	https://pubmed.ncbi. nlm.nih.gov/2242530 0/	Disputed	Disputed	FRE 802; Foundation; MIL; FRE 402; FRE 403
12 13 14	https://www.ncbi.nl m.nih.gov/pmc/articl es/PMC8776517/	Disputed	Disputed	FRE 802; Foundation; MIL; FRE 402; FRE 403
15 16 17	https://www.ncbi.nl m.nih.gov/pmc/articl es/PMC9508148/	Disputed	Disputed	FRE 802; Foundation; MIL; FRE 402; FRE 403
17 18 19 20	https://www.arthropl astyjournal.org/articl e/S0883- 5403(21)00168- 6/fulltext	Disputed	Disputed	FRE 802; Foundation; MIL; FRE 402; FRE 403
212223	https://www.vumedi. com/video/is- cement-past-its-time- uncemented-total- knee-its-time-has- come-again- seriously/	Disputed	Disputed	FRE 802; Foundation; MIL; FRE 402; FRE 403
242526	https://www.ncbi.nl m.nih.gov/pmc/articl es/PMC9633442/	Disputed	Disputed	FRE 802; Foundation; MIL; FRE 402; FRE

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			403
https://www.research gate.net/figure/Attun e-left-and-Attune-S- right-tibia- components-with- additional-cement- pockets_fig1_359868 315	Disputed	Disputed	FRE 802; Foundation; MIL; FRE 402; FRE 403
https://pubmed.ncbi. nlm.nih.gov/2242530 0/	Disputed	Disputed	FRE 802; Foundation; MIL; FRE 402; FRE 403
https://www.mddionl ine.com/news/how- 510k-submission- can-affect-your- patent	Disputed	Disputed	FRE 802; Foundation; MIL; FRE 402; FRE 403
https://patents.google .com/patent/US9498 342B2/en?oq=94983 42	Disputed	Disputed	FRE 802; Foundation; MIL; FRE 402; FRE 403

(b) Defendants' Exhibits

	Defendants' Exhibits							
Ex. #	Description	Authenticity	Admissibility	Objection	Admitted			
101	Expert Report of Michael Ries, M.D., Sc.M.	Stipulated	Disputed	FRE 402; FRE 403; FRE 802				
102	Curriculum Vitae of Michael Ries, M.D., Sc.M.	Stipulated	Disputed	Duplicative; Not Listed in Amended Pretrial Statement (hereinafter "NLAPS")				

1			Expert Report of			FRE 402;
2		103	Chantal E. Holy,	Stipulated	Disputed	FRE 403;
2			Ph.D., MSc.	_	_	FRE 802
3	Ī		Curriculum Vitae of			Duplicative;
3		104	of Chantal E. Holy,	Stipulated	Disputed	Not listed in
4			Ph.D., MSc.	_	_	NLAPS
			Plaintiff's Initial and			
5			Supplemental			
6		105	Responses to DePuy			FRE 402;
6			Defendants Requests	Stipulated	Disputed	FRE 403
7			for Production			
,			Plaintiff's Initial and			
8			Supplemental			
0		106	Responses to DePuy	Stipulated	Disputed	FRE 402;
9			Defendants			FRE 403
10			Interrogatories			
10			Anesis Spine & Pain			
11			Care Records			
10			(BosleyRecords0012			
12			62-001388;			
13		107	BosleyProduction00			
13			0036-000254;			
14			BosleyProduction00	Stipulated	Stipulated	
			1636-001777;			
15			BosleyNOIProductio			
16	=		n000747-000888)			
10			Columbia Physical			
17		100	Therapy Services	Gui 1 u 1	Cut 1 4 1	
		108	Records	Stipulated	Stipulated	
18			(BosleyProduction0			
19	-		01778-001855)			
19			Dr. Azar			
20		109	Sadeghalvad Records	Stipulated	Stipulated	
		109	(BosleyProduction0	Supulated	Supulated	
21			02013-002021)			
22			Kaiser Permanent			
22			Approval for			
23		110	Revision Surgery	Stipulated	Stipulated	
		110	(BosleyProduction	Suparatea	Supulated	
24			000334-335)			NLAPS
25	<u> </u>		1 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2	<u>I</u>	1	
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1		Paul Brown, M.D.				
2	111	Records				
2	111	(BosleyProduction0	Stipulated	Stipulated		
3		01856-1890)				
4		Proliance Surgeon's Records				
4		(BosleyRecords0011				
5		39-001261;				
	112	BosleyProduction				
6		001891-002012;	Stipulated	Stipulated		
7		BosleyNOIProductio	1			
,		n000130-000251)				
8		Richard Ludwig,				
9		M.D. Medical				
9	112	Records				
10	113	(BosleyProduction0 04051;	Stipulated	Stipulated		
11		BosleyProduction00	Supulated	Supulated		
11		4492-004496)				
12		Seattle Hand				
1.0		Surgery Group				
13	114	Records	Stipulated	Stipulated		
14		(BosleyProduction0				
		02022-002040)				
15		Seattle Pain Relief				
16	115	Records (BosleyProduction0	Stipulated	Stipulated		
10		02041-002140)	Supulated	Supulated		
17		Swedish Medical				
18	116	Center Records			FRE 402;	
10	116	(BosleyRecords0013	Stipulated	Disputed	FRE 403;	
19		85-001388)			FRE 802	
20		Valley Medical				
20		Center Records				
21		(BosleyProduction0 02141-003291;				
22	117	BosleyRecords0000				
22		01-001138;	Stipulated	Stipulated		
23		BosleyRecords0015				
		87-002001)				
24		,	-	•	-	

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1		VIVAA Records			
2	110	(BosleyProduction0			
	118	03494-004050; BosleyNOIProductio	Stimulated	Stimulated	
3		n000258-000746)	Stipulated	Stipulated	
4		2006 Misc.			
	110	Pharmacy Records			FRE 402;
5	119	(BosleyProduction0			FRE 403;
6		04231-004238)	Stipulated	Disputed	FRE 802
		2009 Misc. Pharmacy Records			EDE 402.
7	120	(BosleyProduction0			FRE 402; FRE 403;
8		04208-004210)	Stipulated	Disputed	FRE 802
0		2013 Misc.	.	•	
9		Pharmacy Records			
10	121	(BosleyProduction0			EDE 402
1.1		04162-004163; BosleyProduction00			FRE 402; FRE 403;
11		4166-004195)	Stipulated	Disputed	FRE 802
12		Appris Health	1	1	
12	122	Pharmacy Records			FRE 402;
13	122	(BosleyProduction0			FRE 403;
14		04159-004161)	Stipulated	Disputed	FRE 802
15		EnterpriseRx Pharmacy Records			FRE 402;
13	123	(BosleyProduction0			FRE 403;
16		00338-000339)	Stipulated	Disputed	FRE 802
17		Fred Meyer EasyFill			
1 /		Pharmacy Records			
18		(BosleyProduction0 00336-000337;			
19	124	BosleyProduction00			
		0340-000362;			FRE 402;
20		BosleyProduction00			FRE 403;
21		4142-004158)	Stipulated	Disputed	FRE 802
		Plaintiff's			EDE 402
22	125	Prescription Records (BosleyProduction0			FRE 402; FRE 403;
23		04055-4253)	Stipulated	Disputed	FRE 403; FRE 802
		1200)	- sipaiarea	1 2 10 0 0 0 0	111111111111111111111111111111111111111

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1			Rite Aid Pharmacy		1	
			Records			
2			(BosleyProduction			
3	12	26	004078-004094; BosleyProduction			
4			004104-004126;			FRE 402;
5			BosleyProduction00	C4:1	D:4	FRE 403;
3			4201-004207) Walgreens	Stipulated	Disputed	FRE 802
6			Pharmacy Records			
7			(BosleyProduction0			
			00255;			
8	12	27	BosleyProduction00			
9			0257-000275; BosleyProduction			
1.0			004055-4077;			FRE 402;
10			BosleyProduction00			FRE 403;
11			4196-004200)	Stipulated	Disputed	FRE 802
12			Bosley v. C.I. Earll Co., Case Records			FRE 402;
12	12	28	(BosleyvEarl100000			FRE 402;
13			1-000049)	Stipulated	Disputed	FRE 802
14			Chapter 13	•		
	10		Bankruptcy Records			EDE 400
15	12	29	(BosleyChapter13Pr oduction000001-			FRE 402; FRE 403;
16			000291)	Stipulated	Disputed	FRE 802
			Purdue Pharma LP,	Suparavea	Disputed	1112 002
17			Personal Injury			
18			Claimant Proof of			
10	13	80	Claim Form for			EDE 402.
19			Derrick Bosley (BosleyProduction0			FRE 402; FRE 403;
20			00001-000016)	Stipulated	Disputed	FRE 802
21			Sandra Bosley	1	•	
21			Purdue Pharma			
22	13	31	Claim			EDE 402.
23			(SandraBosleyPurdu ePharmaClaim00000			FRE 402; FRE 403;
۷٥			1-000020)	Stipulated	Disputed	FRE 802
24			"Timeline of My	1		
25	13	32.	Surgeries"			
	13		(BosleyProduction0	Cut 1 4 1	D: 4 1	NILADO
26			00256)	Stipulated	Disputed	NLAPS

1	ĺ		Plaintiff's Tax			
2		133	Returns 2009- 2021(BosleyProduct			
3			ion004292-4356)	Stipulated	Stipulated	NI ADC.
4			Correspondence			NLAPS; Attorney
5		134	between Plaintiff's Counsel and Experts			Work Product;
			(BosleyProduction			FRE 401;
6			004357-004491)	Stipulated	Disputed	FRE 402
7			All records and documents produced			
8			by Plaintiff in			
9			response to DePuy Defendants'			
10			Requests for Production			
11			(BosleyProduction0 00001-004496;			
12			BosleyNOIProductio			
13			n000001-000888; BosleyChapter13Pro			
14			duction000001- 000291;			
15		135	SandraBosleyPurdue			
16			PharmaClaim00000 1-20; Bosley v			
17			Oaks000001- 000006; Bosley v			
18			Earl1000001-			
19			000049; Bosley3rdSuppProd			
20			uction000001-			
			000021; Chapter13Dockets00			
21			0001-000009;			Duplicative;
22			SnohomishClerkPap ers000001-19)	Stipulated	Disputed	FRE 401; FRE 402
23			DePuy Complaint		•	
24		106	File (DBOSLEY_000000			NLAPS; FRE 401;
25		136	001-			FRE 402;
			DBOSLEY_000065 87)	Disputed	Disputed	FRE 403; FRE 802
26	L		01)	Disputed	Disputed	1102 002

1 2	137	DePuy DHRs (DBOSLEY_000065 88-			NLAPS; FRE 401; FRE 402;
3		DBOSLEY_000067 19)	Disputed	Disputed	FRE 403; FRE 802
4		Defendants' April 21, 2023 Production			
5	138	(DEPATT_0000000 01-			
7		DEPATT_00760251	Stipulated	Disputed	NLAPS
8	139	ATTUNE® Package Insert	Stipulated	Stipulated	
9	140	ATTUNE® Surgical Technique Brochure	Stipulated	Disputed	NLAPS
1011	141	ATTUNE® Instructions for Use (DEPATT_0140104			
12		DEPATT_00140199	Stipulated	Disputed	NLAPS
131415	142	American Joint Replacement Registry: 2022 Annual Report	Disputed	Disputed	NLAPS
16 17 18 19	143	Australian Orthopaedic Association National Joint Replacement Registry: Hip, Knee & Shoulder Arthroplasty: 2022 Annual Report	Disputed	Disputed	NLAPS
20		The New Zealand Joint Registry -			
21	144	Twenty-Three Year			
2223		Report - January 1999 to December	Diamete d	Diamyte 4	NII A DC
23 24		2021 National Joint	Disputed	Disputed	NLAPS
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3		exposure to fluoroquinolones,			
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3		posthysterectomy				
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4		settings: A				
5		systematic review and meta-analysis.				
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2		and economic burden, risk and			
3		outcomes following application of			
4		software-assisted			
5		hexapod ring fixation systems.			
6	190	Reid JS, Vanderkarr			
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3		alloys in medical			
		devices or cobalt in			
4		occupational settings: A			
5		systematic review			
		and meta-analysis of			
6		overall cancer risk			
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9		Zhang S, Holy CE,			
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10		Perkins LE, Hasgall			
		P, Katz LB, Brown JR, Orlandini L,			
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12			exposure to			
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7		Healthcare			
_		Utilization, and			
8		Perioperative and			
9		Post-Operative			
9		Outcomes of			
10		Patients Treated			
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11		Lumbar Spinal Surgery Using Open			
12		versus Minimally			
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2		Risk and Economic				
2		Burden of Surgical				
3		Site Infection				
		Following				
4		Colorectal Surgery				
5		Using a US				
3		Longitudinal				
6		Database: Is There a				
Ü		Role for Innovative				
7		Antimicrobial				
0		Wound Closure				
8	199	Technology to				
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12 13		2020 Sep 22. The economic	Stipulated	Disputed		
		2020 Sep 22. The economic burden of infections following	Stipulated	Disputed		
13 14		2020 Sep 22. The economic burden of infections	Stipulated	Disputed		
13 14 15		2020 Sep 22. The economic burden of infections following intramedullary nailing for a tibial shaft fracture in	Stipulated	Disputed		
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	_		Complications in type III open tibial	Stipulated	Disputed	NLAPS
13 14			Complications in	Stipulated	Disputed	NLAPS
13 14 15	-		Complications in type III open tibial shaft fractures treated with open reduction and	Stipulated	Disputed	NLAPS
13 14			Complications in type III open tibial shaft fractures treated with open reduction and internal fixation.	Stipulated	Disputed	NLAPS
13 14 15			Complications in type III open tibial shaft fractures treated with open reduction and	Stipulated	Disputed	NLAPS
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13 14 15 16 17 18		209	Complications in type III open tibial shaft fractures treated with open reduction and internal fixation. Chitnis AS, Vanderkarr M, Sparks C, McGlohorn J, Holy	Stipulated	Disputed	NLAPS
13 14 15 16 17		209	Complications in type III open tibial shaft fractures treated with open reduction and internal fixation. Chitnis AS, Vanderkarr M, Sparks C, McGlohorn J, Holy CE.	Stipulated	Disputed	NLAPS
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3		emollient therapy for			
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4		primary care in children and adults:			
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		analysis of the			
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12		Medical resource	Supulated	Disputed	NLAI 3
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14		for total hip			
17		arthroplasty:			
15		benchmarking an			
16		anterior approach technique in the			
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2			Occupation of			
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11		recalcitrant chronic				
12		rhinosinusitis on				
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1		Early versus delayed				
2		endoscopic sinus surgery in patients				
3		with chronic rhinosinusitis:				
4		impact on health				
5		care utilization.				
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6		CE, Hopkins C.				
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11		In-office balloon				
12		catheter dilation: analysis of 628				
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13		administrative claims database.				
14	221	Sillers MJ, Lay KF,				
15		Holy CE.				
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18		The impact of endoscopic sinus				
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20		care use in patients				
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2		surgery provides				
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4		postoperatively.				
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18		Why the confusion	1	<u> </u>		
19		about sinus				
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		Holy C.				
21	225	Otolaryngol Clin				
22	223	North Am. 2014				
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24		1.003. Epub 2014			FRE 803(18);	
25		Jan 11.	Stipulated	Disputed	NLAPS	

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2		mesenchymal stem cell enriched grafts			
3		in an ovine			
4		posterolateral lumbar spine model.			
5		Gupta MC, Theerajunyaporn T,			
6	226	Maitra S, Schmidt			
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11		258863.40984.32.	Stipulated	Disputed	NLAPS
12		Bone grafts prepared with selective cell			
		retention technology			
13		heal canine segmental defects as			
14		effectively as			
15		autograft.			
16	227	Brodke D, Pedrozo HA, Kapur TA,			
17		Attawia M, Kraus			
18		KH, Holy CE, Kadiyala S, Bruder			
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3			CE, Shoichet MS,			
4		228	Davies JE.			
5			J Craniofac Surg. 2003			
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7			10.1097/00001665-	Gri 1 . 1	D: 1	FRE 803(18);
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8			and Aseptic			
9			Loosening			
10			Following Total			
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11			Registry Outcomes			
12			and Analysis of NJR			
1.2			Data dated April 21,			FRE 803(18);
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14			Meta-Analysis of			EDE 401
1.5		230	Attune Registries PowerPoint dated			FRE 401; FRE 803(18);
15			March 24, 2020	Stipulated	Disputed	NLAPS
16	•		NJR Implant			
17			Bespoke Report for			
1 /		231	Attune (PS RP)			
18			dated March 11, 2020	Stipulated	Diamutad	FRE 803(18); NLAPS
19			NJR Implant	Supulated	Disputed	NLAPS
17			Bespoke Report for			
20		232	Attune (PS FB)			
21			dated March 11,		D :	FRE 803(18);
	ļ		2020 NJB Januara	Stipulated	Disputed	NLAPS
22			NJR Implant Bespoke Report for			
23		233	Attune (CR FB)			
		_55	dated March 11,			FRE 803(18);
24			2020	Stipulated	Disputed	NLAPS

1		NJR Implant			
2	224	Bespoke Report for			
	234	Attune (CR RP) dated March 11,			FRE 803(18);
3		2020	Stipulated	Disputed	NLAPS
4		AAOS Report re:	*	1	
_	235	Attune FB Devices			
5		dated February 13, 2020	Stimulated	Disputed	FRE 803(18);
6		ERPD Data	Stipulated	Disputed	NLAPS
7	226	Summary for Attune			
	236	Tibia dated			FRE 803(18);
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9	237	Data from New Zealand Joint			FDE 902(19).
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12		Registry	Disputed	Disputed	NLAPS
13	240	AOANJRR Report			EDE 002(10)
	240	re: Attune dated June 13, 2019	Stipulated	Disputed	FRE 803(18); NLAPS
14		MARCQI Report –	Supulated	Disputed	NLAI 5
15		Summary and			
	241	Review of DePuy			
16	241	Synthes Products			
17		and Class Trends	G.: 1 . 1	D: 4 1	FRE 803(18);
1.0		dated January 2019 DePuy Attune	Stipulated	Disputed	NLAPS
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ACTION BY THE COURT

- (a) This case is scheduled for trial before a jury on October 10, 2023, at 9 a.m.
- (b) Trial briefs shall be submitted to the court on or before September 26, 2023.
- (c) Jury Instructions requested by either party shall be submitted to the Court on or before September 26, 2023. Suggested questions of either party to be asked of the jury by the Court on voir dire shall be submitted to the Court on or before September 26, 2023.
- (d) This order has been approved by the parties as evidenced by the signatures of their counsel. This order shall control the subsequent course of the action unless modified by a subsequent order. This order shall not be amended except by order of the court pursuant to agreement of the parties or to prevent manifest injustice.

DATED this 3rd day of October, 2023.

HELLE L. PETERSON United States Magistrate Judge